



DAN MORALES  
ATTORNEY GENERAL

Office of the Attorney General  
State of Texas

September 12, 1991

Ms. Elizabeth Lutton  
Senior Assistant City Attorney  
City of Odessa  
P. O. Box 4398  
Odessa, Texas 79760-4398

OR91-412

Dear Ms. Lutton:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252- 17a, V.T.C.S. Your request was assigned ID# 13348.

You have received a request for copies of records relating to a former city employee, including (1) records relating to an investigation into alleged sexual harassment, the employee's resignation, and any disciplinary action, and (2) records responsive to an employee background check and letters of recommendation relating to the employee's hiring as Chief of Police. You state that the City of Odessa has no records responsive to the second request. You claim that documents relating to an employee disciplinary investigation are excepted from required public disclosure by sections 3(a)(1) and 3(a)(2) of the Open Records Act.

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Section 3(a)(2) excepts "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." You assert that the requested information is protected by common law privacy interests. In order for information to be brought within the exception for information deemed confidential by common law privacy interests under sections 3(a)(1) and 3(a)(2), the information must meet two criteria:

(1) the information [must contain] highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information [must not be] of legitimate concern to the public.

*Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); *see also* Open Records Decision Nos. 579 (1990); 397, 359 (1983).

Some of the documents submitted to us contain information of a highly intimate or embarrassing nature, namely, information relating to intimate acts between the subject and one of his subordinates. However, because the information involves a prominent former public employee and allegations of sexual harassment in a public workplace, the information is of legitimate public concern. *See* Open Records Decision No. 579. Accordingly, all of the requested information must be disclosed.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-412.

Very truly yours,



Mary R. Crouter  
Assistant Attorney General  
Opinion Committee

MRC/GCK/mc

Ref.: ID# 13348

cc: Mr. J. D. McNamara  
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